Supreme Court, U.S.
FILED

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

SHARON SHIELDS

VS.

WOODROW SHIELDS

ON PETITION FOR WRIT OF CERTIORARI TO:
The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

Woodrow Shields, Pro Se
9402 Book Row
Columbia, MD 21046

QUESTIONS PRESENTED

1. Are Maryland courts bound to construe and enforce an antenuptial agreement in accordance with an included specified choice-of-law clause, and are they bound to observe the Full Faith and Credit Clause of the Constitution of the United States, Article IV, Section 1.

2. Are Maryland courts bound to distribute the parties' property in accordance with federal regulations?

PARTIES TO THE PROCEEDINGS

The Petitioner is Woody Shields, who is a Maryland resident living in Howard County. The Petitioner is a private citizen having represented himself (pro se) in the courts below.

The Respondent is Sharon Shields the Petitioner's former wife and the adverse party below.

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OPINIONS BELOW

The Court of Appeals of Maryland, whose July 28, 2006 denial of petitioner's writ of certiorari, appealing an adverse holding by the Maryland Court of Special Appeals dated March 22, 2006 was issued on July 28, 2006. The unreported opinion appealed from here, namely the March 22, 2006 opinion by the Maryland Court of Special Appeals, was docketed at No. 2341 September Term 2004. The opinion appears herein as Appendix "A"). The underlying opinion of the Circuit Court of Howard County Maryland, docketed at No. 13-C-03-055885, was filed on December 23, 2004. The Circuit Court opinion is reproduced as Appendix B. hereto.

STATEMENT OF JURISDICTION

The denial of Mr. Shield's petition for writ of certiorari to the Maryland Court of Appeals was issued by the said Court on July 28, 2006. This Court has jurisdiction pursuant to U.S. Supreme Court Rule 10 C.

CONSITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article IV, Section. 1

"Full Faith and Credit shall be given in each State to the public Acts, records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

STATEMENT OF THE CASE

Procedural History

The Court of Appeals of Maryland denied petitioner's request for a writ of certiorari on July 28, 2006, wherein petitioner Shields, pro se, sought appellate review of the unreported opinion of the Maryland Court of Special Appeals

Factual History

This case involves the interpretation, construction and enforcement of an antenuptial agreement which contains a Pennsylvania choice-of-law clause, and warrants review by this Court because the United States Supreme Court has not previously addressed the issue of how to construe an antenuptial agreement containing a foreign choice-of-law clause. The present case
appears to be one of first impression.

The importance of this case extends well beyond its particular facts as Americans become more and more mobile, and as antenuptial agreements become more and more prevalent. The case presents an important question of national significance with reference to the conflicting laws applied to antenuptial agreements across the country, and in particular by Maryland's neighbor to the north, Pennsylvania.

Research performed in preparation for the trial and appeals of this case indicates that in the overwhelming majority of cases antenuptial agreements are upheld as written because they are deemed to embody the wishes of the parties. The Shields case is unusual because the trial court found the agreement valid, but interpreted it in a way that rendered it meaningless. Petitioner argues the findings of the trial court and affirmation by the Court of Special Appeals circumventing

the agreement and rendering it meaningless were primarily the result of two legal errors: (1) the application of Maryland law to a Pennsylvania agreement, and (2) the application of outdated Pennsylvania case law.

Both parties testified consistently at trial that prior to the marriage of Woodrow Shields (Petitioner) and Sharon Brechbill (Respondent), they entered into an antenuptial agreement, (attached hereto). Both parties testified that during the week of February 2, 1981, they met with an attorney in Chambersburg, Pennsylvania, he drafted the agreement, they met with him again and reviewed the agreement, Respondent requested a change to paragraph #5 (pertaining to alimony), the change was made, lists of the parties' property were attached to the agreement, and the agreement was signed, witnessed, and notarized.

At the time the antenuptial agreement was negotiated and signed the parties were each 27 year old residents of Pennsylvania, and were employed - Petitioner as a nuclear engineer in the United States Navy and Respondent as a teacher in the Pennsylvania school system.

The agreement stated it was the parties' intention to:

". . .establish their mutual property rights now and for the future, and to guarantee to each individual ownership in and to all property and estate which each now owns or subsequently may acquire. . ."

It further provided that all property and estate "of every nature," and all property and estate "hereafter acquired" would "remain forever" the individual property and estate of the party so owning and acquiring it," and neither of the parties shall acquire any interest in the other's property "because of the marriage relationship." (Paragraph 1). The agreement also contained a mutual disclaimer clause that stated:

"Each of the parties hereby disclaims all right, title and interest in all property and estate now owned or hereafter

acquired by the other, renouncing forever all claims to the separate estate of the other including all right of dower, curtesy, family exemption, to elect against the will or conveyances, or to receive a share of the estate under the intestate laws." (Paragraph 2).

Paragraph 6 of the agreement states that it will be construed in accordance with Pennsylvania law. For the purposes of disclosure, the parties attached to the agreement Exhibit A and Exhibit B which listed the property of each of the parties.

The parties were married on February 6, 1981 in Chambersburg, Pennsylvania. The wedding was the first for Woodrow Shields and the second for Sharon Brechbill. The parties purchased a home in Newport News, Virginia where they lived for five years. They had two children, both of whom are emancipated. In December 1985, they purchased a home at 9402 Book Row, Columbia, Maryland, where they lived until their separation in July of 2003.

During the marriage, the Respondent stayed at home with the children for a period of 7 years, and Petitioner stayed at home for a period of 7 years. During each period, both worked part-time
outside the home (she as a tutor, he as a reservist) and part-time in the home. Otherwise, each of the parties was employed full time.

On July 22, 2003, Respondent filed a complaint for a limited divorce. She failed to acknowledge the existence of the antenuptial agreement, and asked the court to award her alimony, an equitable distribution of the property, a monetary award, and attorney's fees. After amending her complaint several more times, Respondent dropped her request for alimony and acknowledged the parties had entered into an antenuptial agreement, but she continued to press for an equitable distribution of the parties' property, a monetary award, and attorney's fees.

The major assets of the parties are: (1) 9402 Book Row, Columbia, Maryland, and the contents of the property, (2) 10685 High Beam Court, Columbia, Maryland, and the contents of the property, (3) Petitioner's pensions/retirement pay, including Social Security, Military Retired Pay, IRA, APL 403(b), Thrift Saving Plan (TSP), (4) Respondent's pensions, including Social Security, Maryland State Teacher's pension, IRA, Tax Sheltered Annuity (TSA), (5) Other personal property acquired prior to the marriage, (6) Other personal property acquired during the marriage,
including cash accounts.

Prior to trial both parties asked the court to determine the validity of the antenuptial agreement, but the trial court opted to determine all the issues at once, so each of the parties was forced to present evidence to support alternative legal positions.

The case was tried in the Circuit Court for Howard County before Judge Diane O. Leasure on October 19, 20, and November 12, 2004. The trial court was asked to determine the validity of the antenuptial agreement, the division of property, and the grounds for divorce.

The trial court found that each of the parties had fully disclosed all their financial dealings including their retirement programs to each other prior to entering into the antenuptial agreement, and that the agreement was entered into willingly with no duress or coercion. (Page 4-5 of oral ruling). The trial court determined that the antenuptial agreement was valid, and that it was "clear in its terms." (Page 4-27 of oral ruling). The trial court then determined that all the property acquired during the marriage was not subject to the terms of the antenuptial agreement, but was "marital property" as that term is defined by the Maryland Marital Property Act, and she divided it exactly as it would have been divided under Maryland law if the parties had no antenuptial agreement. The Court of Special Appeals of Maryland affirmed in all but two minor aspects; and the Court

of Appeals of Maryland denied the petition for a writ of certiorari.

Reasons for Granting the Writ

I. Are state (Maryland) courts bound to construe and enforce an antenuptial agreement in accordance with the specified venue is clause, and are they bound to observe the full faith and credit clause of the Constitution of the United States, Article IV, Section 1?

Antenuptial agreements are made between prospective spouses for the purpose of predetermining the disposition of their property and support obligations in the event of divorce, separation or death. Generally, the parties to an antenuptial agreement are seeking to alter or circumvent the array of statutory rights accorded to spouses upon the termination of the marriage, and like other contracts, antenuptial agreements are entered into to provide the parties with certainty as to what their obligations will be if the marriage relationship ends. Certainty and predictability are essential elements of the contracting process, and if predictability is to be preserved it is important that contracts be construed in accordance with the law of the state chosen by the parties so they can be assured their property will be divided as they had intended.

A. Choice-of-Law – Maryland courts did not apply the parties' choice-of-law clause to the facts of this case. The parties' antenuptial agreement (Paragraph 6) specifies that it "shall be construed under and in accordance with the laws of Pennsylvania, and shall in no way be affected by any change in domicile of either party." Pursuant to Md. Code Ann. Cts and Jud. Proc. §§10-501 to 10-507, Maryland courts must take judicial notice of the statutory and case law of a foreign

jurisdiction [1] and apply foreign law to the facts of the case, as would be proper if foreign law were domestic law. Maryland courts did not apply Pennsylvania law to determine the interpretation, construction and enforcement of the parties' antenuptial agreement.

B. Conflict of Law - The Opinion of the Court of Special Appeals of Maryland (page 3) states that when the parties' executed their antenuptial agreement, in 1981, such agreements were then "held to be *per se* void as contrary to public policy" in Maryland. The fact that the Court of Special Appeals of Maryland included this statement in its Opinion, suggests that it influenced the Court's determination of this case.

The legality, interpretation and enforceability of an antenuptial agreement executed in another state at a time when it would have been "held to be *per se* void as contrary to public policy" in Maryland appears to be a case of first impression. The issue is one of a Conflict of Law, and should be examined in light of the "full faith and credit" clause of the Constitution of the United States, Article IV, Section 1, which states:

> "Full Faith and Credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Although the Supreme Court of the United States has not specifically addressed the "full faith and credit" clause in regard to antenuptial agreements, it has addressed its effect on marriage laws, which in the 1930s varied from state to state. In the case of *Loughran v. Loughran et al., trustees*, 292 U.S. 216, 54 S.Ct. 684 (1934), the court held that a state had a constitutional obligation to recognize a marriage which was

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[1] As required by §10-504, Petitioner provided judicial notice in his Trial Memorandum, that the choice-of-law in this case was Pennsylvania law.

valid in another jurisdiction, even though the marriage was invalid under its own laws. In so finding, the Supreme Court ruled at 223 and 228:

> "The mere statutory prohibition by the State of the domicile. . . of the remarriage of a divorced person. . . is given only territorial effect . .[and] does not invalidate a marriage solemnized in another State in conformity with the laws thereof."
>
> "Courts of the District [of Columbia] are bound, equally with courts of the States, to observe the command of the full faith and credit clause."

In the present case, antenuptial agreements were valid and binding in Pennsylvania when the parties entered into their agreement, and the parties did not reside in Maryland prior to 1984 when antenuptial agreements were "held to be *per se* void as contrary to public policy." (The parties moved to Maryland in 1985). Pursuant to the full faith and credit clause of the Constitution of the United States, the fact that an antenuptial agreement waiving marital property rights in contemplation of divorce was void in Maryland at the time the parties entered into it in 1981 should have no bearing on the validity, interpretation, construction, or enforcement of the agreement, and to the extent Maryland courts relied on Maryland law, it was in conflict with the Constitution of the United States to do so.

C. Pennsylvania law - Antenuptial Agreements

The laws of Pennsylvania regarding the validity, interpretation and enforceability of antenuptial agreements are very different from the laws of Maryland.

In 1985 the Supreme Court of Pennsylvania, in the case of *Re Estate of Geyer*, 516 Pa. 492, 533 A.2d 423 (1985), shifted slightly, but importantly, the full and fair disclosure test to include the disclosure of statutory rights. Five years later, *In re*

Geyer was overruled [2] by *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990), which provides that antenuptial agreements should be treated as ordinary contracts and not accorded any special treatment because of the relationship of the parties. The Simeones entered into their agreement in 1975, six years before the Shields, and in 1990 the Supreme Court of Pennsylvania held that, "Absent fraud, misrepresentation or duress, spouses should be bound by the terms of their agreements."

In 2004, Pennsylvania amended its Divorce Code to include a section entitled "Premarital Agreements," 23 Pa.C.S. §3106, which provides that the party alleging the agreement is unenforceable has the burden of proving, by clear and convincing evidence, that the agreement was not executed voluntarily or there was not fair and reasonable disclosure. 23 Pa.C.S. §3106 was a codification of the common law in Pennsylvania. The annotated legislative history of 23 Pa.C.S. §3106 provided the evolution of Pennsylvania common law regarding antenuptial agreements,

> "Section 3106 is new. Currently, premarital agreements are governed by case law. In *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990), the Supreme Court discarded the approach that had been followed since its 1968 decision in *Hillegass Estate*, 431 Pa. 144, 244 A.2d 672. The *Hillegass* approach upheld a prenuptial agreement if it either made a reasonable provision for the spouse or was entered into after full and fair disclosure of financial status. The Supreme Court's
> 1987 plurality decision in *In re Estate of Geyer*, 516 Pa. 492, 533 A.2d 423, stated that full and fair disclosure includes evidence that the parties are aware of the statutory rights they are relinquishing in

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[2] Williston uses the term "overruled", whereas LexisNexis uses the term "questioned."

the agreement. The *Simeone* decision rejected inquiry into whether a reasonable provision was made for a spouse and the parties' knowledge of their statutory rights and put premarital agreements on a par with other contracts, stating that they could be invalidated for fraud, misrepresentation or duress. It also recognized that because the parties to premarital agreements "stand in a relation of mutual confidence and trust," full and fair disclosure of the parties' financial positions is required.

Subsection (a) is modeled after section 6(a) of the Uniform Premarital Agreement Act and encompasses the approach of *Simeone*. Section 6(a) of the Uniform Act provides that an agreement is not enforceable if the party challenging it did not execute it voluntarily, or if the agreement was unconscionable when executed and the challenging party did not receive and did not waive disclosure of the other party's property or financial obligations and could not reasonably have had adequate knowledge of such. Section 6(b) provides that where an agreement's modification or elimination of spousal support would cause a spouse to be eligible for public assistance, the court may award support to the extent necessary to avoid the eligibility.

While embracing the voluntary execution and disclosure provisions of the Uniform Act, subsection (a) does not adopt the unconscionability or public assistance provisions. Note that under the Uniform Act, lack of disclosure would render an agreement unenforceable only if the agreement were also unconscionable when executed.

Under subsection (a), the party seeking to set aside the agreement must prove that either the agreement was not executed voluntarily (paragraph (1)) or all

> the elements of paragraph (2) are met.
> The definition of "premarital agreement" in subsection (b) is modeled after the definition in the Uniform Act."

Simeone and *Geyer* were of such note that they were singled out of thousands of other cases for discussion by Williston on Contracts. [3] According to Williston, given the many changes that have occurred in society concerning the marital relationship there is significant debate as to whether and under what circumstances courts should interfere with the allocation of property made by parties in an antenuptial agreement. Williston states that *Simeone* and *Geyer* illustrate the problems better than most other cases, and that the cases generated "opinions comparable to those handed down by the United States Supreme Court in its most controversial constitutional cases." Williston, §11.8, p.471.

The *Simeone* court reasoned that its previous decisions concerning antenuptial agreements (including *Geyer*) "rested upon a belief that spouses are of unequal status and that women are not knowledgeable enough to understand the nature of contracts that they enter." The *Simeone* court, noting that the law had advanced to recognize the equal status of men and women in society, discarded the paternalistic presumptions and protections that arose to shelter women from the inferiorities and incapacities which they were perceived as having in earlier times, and instead adopted a newer approach of equal treatment.

The Simeones entered into their agreement in 1975, six years before the Shields. As a result of *Simeone*, and all the cases that have been decided since, Pennsylvania has one of the most progressive views of antenuptial agreements. Maryland,

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[3] Samuel Williston, A TREATISE ON THE LAW OF CONTRACTS, Vol 5, §11:8, pages 471-479, (Richard A. Lord 4th ed. Lawyers Coop Pub 1993).

on the other hand, views them much more conservatively. More specifically, with regard to the interpretation and enforcement of antenuptial agreements and the rules for their construction, the relevant differences in Pennsylvania law and Maryland law are:

1. Since at least 1925, Pennsylvania has recognized the validity of agreements waiving marital property rights made in contemplation of divorce. *Miller v. Miller*, 284 Pa. 414, 418, 419, 131 A. 236, 238 (1925); *Zlotziver v. Zlotziver*, 355 Pa. 299, 304, 49 A.2d 779, 781-782 (1946). By contrast, before 1984, Maryland held such agreements to be *per se* void as contrary to public policy.

2. In Pennsylvania antenuptial agreements are presumed, as a matter of law, to be valid and binding as written, and the burden of proof is on the party alleging the agreement to be unenforceable. In Pennsylvania it has long been held that antenuptial agreements are presumptively valid and binding on the parties, and the person seeking to nullify, avoid or circumvent it has the burden of proving the invalidity by clear and convincing evidence. *Estate of Hillegass*, 431 Pa. 144, 150, 244 A.2d 672, 675 (1968).

In Maryland there is no presumption of validity and the burden of proof is on the party seeking to enforce the antenuptial agreement to prove there was full and frank disclosure, the agreement was fair and reasonable, and there was no overreaching. *Cannon v. Cannon*, 384 Md. 537, 865 A.2d 563 (2005).

3. In Pennsylvania no confidential relationship exists between the parties as a matter of law. With regard to interpretation, construction, enforcement and remedies, Pennsylvania construes antenuptial agreements in accordance with traditional principles of contract law. *Sabad v. Fessenden*,

825 A2d 682 (Pa. Super. 2003). [4] Pennsylvania courts reject the notion that a court should consider the knowledge of the contracting parties or the reasonableness of their bargain when interpreting antenuptial agreements. Parties are bound by their antenuptial agreements regardless of whether the terms were read or fully understood, and irrespective of whether the bargains were good or reasonable. *Simeone,* 525 Pa. at 399-400, 581 A.2d at 165.

Whereas in Maryland, the parties to an antenuptial agreement are considered to be in a confidential relationship as a matter of law, which allows a Maryland court to weigh and assess various factors including the reasonableness of the bargain, the situation of the parties, their ages, their respective holdings and income, the circumstances leading to the execution of the agreement, the actions of the parties after the marriage and how the actions tended to show the parties' interpretation of the agreement, and the needs of the parties, including whether each can live substantially as comfortably as before the marriage. *Estate of Hillegass*, 431 Pa. 144, 150, 244 A.2d 672, 675 (1968). *Zlotziver v. Zlotziver*, 355 Pa. 299, 304, 49 A.2d 779, 781-782 (1946)*Miller v. Miller*, 284 Pa. 414, 418, 419, 131 A. 236, 238 (1925); Pennsylvania law provides no such authority for a trial court to consider these factors, and under Pennsylvania law it is error for the court to do so.

4. In Pennsylvania overreaching is not the standard by which antenuptial agreements are judged. A Pennsylvania court must only consider whether there was full and fair disclosure and whether the agreement was entered into willingly. If so, the agreement is presumed to be valid and binding upon the parties. In Maryland, a court is required to "come to some conclusion

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[4] Petitioner notes that the parties in *Sabad* did not have a choice-of-law clause in their contract, unlike the agreement of the parties in the present case.

about the unfairness or inequity of the agreement at the time it was entered and if an overreaching had occurred." *Cannon,* 384 Md. at 559, 865 A.2d at 576. This requires a Maryland court to look at many factors (mentioned above) that are not appropriate under Pennsylvania law.

5. In Pennsylvania financial disclosure need not be exact and need not be in writing. In *Sabad v. Fessenden,* 825 A2d at 691 (Pa. Super. 2003) the court stated that disclosure of the financial positions of the parties need not be exact, so long as it is full and fair, and that "it is not necessary to reduce to writing the respective financial disclosures of the parties." In Maryland, memorializing all the parties' assets and placing a value on them prior to signing an antenuptial agreement is considered the best way to prove there was full and fair disclosure. *Cannon,* 384 Md. at 573, 865 A.2d at 584.

6. No independent counsel required in Pennsylvania. See *Simeone,* 525 Pa. at 401, 581 A.2d at 166. In Maryland, the person seeking to enforce the agreement must at least show that the other party had the opportunity to seek counsel prior to signing the agreement. *Cannon,* 384 Md. at 578, 865 A.2d at 587.

Petitioner maintains that in the present case the decisions of the trial court and Maryland courts relied on the more conservative Maryland approach to interpreting antenuptial agreements rather than the more progressive Pennsylvania approach.

D. Principles of Contract Construction

In Pennsylvania antenuptial agreements are considered to be simple contracts, like any other type of contract, and the traditional rules of objective contract construction apply to their interpretation. A court construing an agreement using traditional principles should first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was executed. When the language is plain, as it is in the Shields agreement, and

unambiguous, as the trial court in this case found it to be, there is no room for construction and the court must presume the parties meant what they expressed. The true test of what is meant, when examining the document objectively, is not what the parties thought it meant, but what a reasonable person in the position of the parties would have thought it meant. Such an analysis did not take place in the present case.

E. Conflicts with the Constitution of the United States

1. Made findings in direct conflict with Pennsylvania law.

a. Pensions. At trial, both parties testified that the retirement programs were not included on Exhibits A and B to the antenuptial agreement because, at the time, there was no entitlement earned in either retirement program, and there was no way of knowing whether each person would ever be vested, so the parties' concluded that the retirement programs were not "assets" at that time. Neither party testified that it was their intention to exclude the pensions from the terms of the agreement. There was testimony at trial that other items such as life insurance policies and tax sheltered annuities were not listed, either, and Petitioner argues this is evidence that Exhibits A and B were attached to the agreement for the purpose of disclosure.

The trial court found it was clear from the testimony that both parties were aware the other had "pension rights." Although Pennsylvania law does not require disclosure to be in writing, the trial court reasoned that the parties intended to exclude the pensions from the terms of the agreement because they did not list them on Exhibits A and B. Where, as here, there was disclosure and the parties subsequently entered willingly into an agreement that disclaimed all "right, title and interest in all property and estate now owned or hereafter acquired by the other," Pennsylvania law holds that Respondent has waived any interest she may have had in Petitioner's naval pension and future pensions.

From a historical perspective, many Maryland Courts may not be familiar with the legally-sufficient, simple and concise language of antenuptial agreements written before the passage of federal statutes in the early 1980s, such as the Uniformed Services Former Spouses Protection Act (USFSPA)[5] (effective date of June 25, 1981) and the Employee Retirement Income Security Act (ERISA) (modified in 1984).[6] The federal statutes and ensuing case law greatly increased the complexity of antenuptial agreements that followed. In the present case, both statutes are ex post facto laws as the parties' antenuptial agreement was signed in February 1981 prior to the effective date of these federal statutes.

b. Survivor's benefits. Respondent also waived all rights she may have had to any other survivor benefits, and it was error for the court to award survivor benefits.

2. Made findings in direct conflict with the words of the agreement that was determined to be valid.

a. Diamond Solitaire 0.63 Carat Ring. The ring was listed on Exhibit A of the antenuptial agreement as the personal property of Petitioner. Although the court found the agreement valid and found it only applied to property listed on Exhibits A and B, she nonetheless awarded the ring to the Respondent.

b. Attorney fees. Although the parties' antenuptial agreement contained a clause stating each party waived all claims to attorney fees, (Paragraph 5), the trial court awarded attorney fees to Respondent.

3. Trial Court admitted she was not familiar with Pennsylvania law. The trial court was asked to determine the validity, interpretation (if necessary) and enforceability of a Pennsylvania antenuptial agreement, yet near the end of the second day of trial, the trial court made a statement that she had

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[5] 10 U.S.C. §1408, P.L. 97-252

[6] Retirement Equity Act of 1984, 29 U.S.C. §1056 (d), P.L. 98-397

not looked at Pennsylvania law and did not know Pennsylvania law. The trial court heard two days of testimony and evidence without knowing the standards (which are very different than Maryland) by which the antenuptial agreement was to be judged.

4. Relied on only one outdated Pennsylvania case. During the oral ruling the trial court made reference to only one Pennsylvania case, *Simeone v. Simeone*, 380 Pa. Super. 37, 551 A.2d 219 (1988). The case cited by the trial court was subsequently appealed, and the Pennsylvania Supreme Court significantly changed the standards by which antenuptial agreements were to be considered. *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990). The 1988 *Simeone* decision relied on the reasoning set out in *Geyer* and required courts to determine the reasonableness of the parties' bargain and the fullness of the disclosure. This allowed a court to consider many factors such as the age, intelligence, and knowledge of the parties, their circumstances at the time, the income and property of each party, their actions after marriage and the overall reasonableness of the agreement. *Simeone*, 380 Pa. Super at 41, 45, 551 A.2d at 221, 223.

As discussed earlier, the 1990 *Simeone* decision held that consideration of the knowledge of the contracting parties and the reasonableness of their bargain "departed substantially from traditional rules of contract law," and were no longer appropriate because "traditional principles of contract law provide perfectly adequate remedies." *Simeone,* 525 Pa. at 400, 581 A.2d at 165. Other than the reference to the one outdated 1988 *Simeone* case, the trial court made no further reference to Pennsylvania law, and the ultimate conclusions reached by the trial court confirmed that she viewed this case through the lens of Maryland law. The effect of the trial court's sole reliance on the outdated 1988 *Simeone* case was that the trial court did not use any relevant (or correct) Pennsylvania law to construe the parties' agreement. The 1990 *Simeone* case (and all the others

decided after it) does not support the trial court's interpretation of the parties' agreement, and Petitioner argues that it constitutes error.

By relying on only one outdated case the trial court did not, in fact, take judicial notice of the laws of Pennsylvania as required by Md. Code Ann. Cts and Jud. Proc. §10-501 to §10-507, and did not apply Pennsylvania law to the facts of this case.

5. Considered factors not appropriate under Pennsylvania law

The trial court acknowledged there was a full and fair disclosure of all the parties' assets, and that there was no duress or coercion in the signing of the agreement. Under Pennsylvania law, once the agreement is considered valid, the trial court should only look to the words of the agreement itself to determine the meaning, and if the words are clear, the agreement should be enforced as written. However, there is no indication in the oral ruling that the trial court attempted to construe the agreement by looking only to the four corners of the document, and she did not enforce the agreement as written. Instead, the oral ruling reveals she considered the reasonableness of the provisions for the spouse, the details surrounding execution of the agreement, the situation of the parties at the time, the assets of each person, what subsequently became of each of the assets listed on Exhibits A and B, the testimony of each party regarding their intentions at the time,[7] and the subsequent actions of the parties during the 22 year marriage. Such considerations may be appropriate under

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[7] The trial court found the parties had two intentions in entering into the agreement. However, the trial court's finding disregards Petitioner testimony that he wanted to enter into an antenuptial agreement because he knew that divorce rates were high among submariners, he wanted to protect his military benefits, he did not want to pay alimony, he was uneasy about the prospect of a long term relationship with a person who had been married once before, he wanted to remove all financial incentive for divorce, and he wanted to avoid a lengthy legal process if the marriage did not survive.

Maryland law, but are not appropriate under Pennsylvania law.

6. Did not apply traditional principles of contract construction

If interpretation of the Shields agreement is necessary it should be in accordance with Pennsylvania law which requires antenuptial agreements to be construed with traditional principles of contract construction, rather than scrutinized under the "confidential relationship" standards required by Maryland law. Both the trial court and the Court of Special Appeals failed to apply traditional principles of contract construction to the Shields agreement. Petitioner here maintains that both lower courts ignored the plain meaning of the language of the agreement, disregarded the parties intentions as stated in the agreement, ignored words and phrases in the agreement, failed to construe the agreement as a whole, failed to construe the agreement in the context of its subject matter, interpreted it in a way that rendered it meaningless, interpreted certain parts in a way that annulled other parts, did not apply the "reasonable person" test, and ultimately reached an absurd result.

F. Errors of the Court of Special Appeals

The Opinion of the Court of Special Appeals (pages 2-5) begins with an outline of Maryland law, noting that prior to the decision of *Estate of Hillegass*, 431 Pa. 144, 150, 244 A.2d 672, 675 (1968). *Zlotziver v. Zlotziver*, 355 Pa. 299, 304, 49 A.2d 779, 781-782 (1946)*Miller v. Miller*, 284 Pa. 414, 418, 419, 131 A. 236, 238 (1925); antenuptial agreements were held to be *per se* void as contrary to Maryland public policy. The Court of Special Appeals states that antenuptial agreements are to be evaluated in accordance with the factors set out in *Hartz v. Hartz*, 248 Md. 47, 234 A.2d 865 (1967), [8] discusses confidential relationships and full and fair disclosure, and notes that Respondent did not have independent counsel or any other

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[8] The Maryland Court of Appeals has more recently discussed and further refined the law of antenuptial agreements in the case of *Cannon v. Cannon*, 384 Md. 537, 865 A.2d 563 (2005).

advice before signing the agreement. (Pages 3-4). Only Maryland cases are discussed or cited to this point. The Opinion then states, "With those standards as our guidepost, we consider the agreement that is brought into question in this case." Clearly, the Court of Special Appeals considered Maryland, not Pennsylvania, law to be the standard by which the Shields agreement should be measured.

The Opinion of the Court of Special Appeals contains a short section entitled "Pennsylvania Law" (page 7), in which the Court notes (in a footnote) that the trial court cited the 1988 *Simeone* case, but the Court does not acknowledge or discuss the fact that the later, 1990 *Simeone* case significantly changed the standards for reviewing antenuptial contracts. Instead, the Court quotes language from the 1990 case, then states that they find nothing in the trial court's interpretation of the agreement "that is inconsistent with Pennsylvania law." Petitioner here argues that much of the trial court's oral ruling and her ultimate interpretation of the antenuptial agreement are most definitely not consistent with Pennsylvania law.

Further, the Opinion of the Court of Special Appeals was predicated on two very substantial errors of fact. The Opinion states that "neither party challenged the validity of the agreement and Judge Leasure, in her findings, determined the agreement to be valid, albeit ambiguous." (Page 2). In fact, the validity of the antenuptial agreement was at the very heart of the parties' disagreement. It is the reason there was a trial. Seven days before the trial, Respondent filed a motion to set aside the antenuptial agreement claiming unconscionability, fraud, duress, coercion, and limited terms. (Court Docket #44000). As for ambiguity, the trial court stated that the agreement was "clear in its terms," and she did not find it ambiguous.

II. Are Maryland courts bound to distribute the parties' property in accordance with federal regulations?

If we assume, for the sake of argument, that Maryland law

applies to the Shields case, then the trial court and Court of Special Appeals erred by failing to properly apply Maryland law in the following ways:

A. Property purchased with Joint Funds was not properly divided. The Opinion of the Court of Special Appeals confirms that "10685 High Beam Court" (the house in respondent's name) was purchased with joint funds prior to the parties' separation. In accordance with *Estate of Hillegass*, 431 Pa. 144, 150, 244 A.2d 672, 675 (1968). *Zlotziver v. Zlotziver*, 355 Pa. 299, 304, 49 A.2d 779, 781-782 (1946)*Miller v. Miller*, 284 Pa. 414, 418, 419, 131 A. 236, 238 (1925);

Petitioner is entitled to a division of the equity in 10685 High Beam Court.

In addition, the contents of 9402 Book Row which Respondent moved to 10685 High Beam Court are also "marital property" and subject to distribution in accordance with both Maryland law and Pennsylvania law.

B. Compliance with Federal Regulations

The Judgment for the marital portion of Petitioner's Navy retired pay [9] is incorrect. The trial court's and Court of Special Appeals' reliance on the so-called *Bangs* formula per *Bangs v. Bangs*, 59 Md. App. 350, 475 A.2d 1214 (1984) is superseded by federal regulation, 60 Fed Reg 17507 (1995), which provides that the "total number of reserve retirement points earned during the marriage, must be provided in the court order." The Judgment incorrectly defines a formula for active service based on months of service, rather then reserve service based on retirement points. Although Respondent concedes the error, the Court of Special Appeals did not order the Judgment corrected. If Maryland law applies, the Judgment must read:

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[9] Petitioner maintains the parties' antenuptial agreement precludes distribution of his Navy retired pay, and all other property and estate acquired during the marriage. However, even if one assumes for the sake of argument that the property should be divided, the trial court did not do it correctly.

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying 50% times a fraction, the numerator of which is 3740 reserve retirement points earned during the period of the marriage, divided by the member's total number of reserve retirement points earned."

CONCLUSION

In the present case, the lower courts' interpretation, construction and enforcement of the parties' antenuptial agreement resulted in the agreement being meaningless since the courts below determined it did not apply to any property acquired during the marriage. Such a result is contrary to the language of the agreement itself, the laws of Pennsylvania, and the laws of Maryland, which require recognition of the laws of other jurisdictions (full faith and credit).

For the reasons stated herein, Petitioner respectfully requests that a Writ of Certiorari issue for the purpose of reviewing the judgment of the Maryland Court of Appeals denying a writ of certiorari to review the subject opinion of the Maryland Court of Special Appeals.

Appendix A

UNREPORTED
IN THE COURT OF SPECIAL APPEALS OF MARYLAND
No. 2341 September Term, 2004
WOODROW R. SHIELDS v. SHARON B. SHIELDS
Hollander, Kenney, Sharer,
Opinion by Sharer, J.
Filed: March 22, 2006

Sharon Shields, appellee, was granted an absolute divorce, on the grounds of constructive desertion, by the Circuit Court for Howard County, Hon. Diane O. Leasure presiding. In his pro se appeal, Woodrow R. Shields excepts to nearly every aspect of the court's, evidentiary rulings and, ultimately, to the court's findings and judgment. [10] We conclude that appellant's challenges to the circuit court's rulings and judgment are without merit, and we shall affirm.

BACKGROUND The parties were married on February 6, 1981, in Chambersburg, Pennsylvania. Two children were born of their marriage, William Shields and Leslie Shields, both of whom, at the time of trial were emancipated. At the time of the marriage, Woodrow was an officer in the United States Navy and Sharon was a public school teacher. After their wedding, the couple moved to Newport News, Virginia, where Woodrow was stationed. As a result of the move, Sharon resigned her teaching position. We shall

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[10] On September 15, 2005, after appellee's brief was filed, appellant filed a Motion to Supplement Record, stating: "After reviewing the Brief of (appellee), it became obvious that certain evidence not presented at trail [sic] was significant." (emphasis added) Matters not offered or admitted at trial are not properly before this Court. Appellant's motion is denied. See Md Rule 8-131 (a)

discuss the facts in greater detail in our discussion of the issues before us.Several of appellant's issues relate to an antenuptial agreement executed by the parties on the day before their wedding. We discuss those issues, in turn.Although we find several of appellant's issues to be overlapping, we shall, for the sake of clarity, discuss them as he has presented them, in the order in which he has presented them, and in the order in which appellee has responded.

1.The trial court erred by misinterpreting the plain meaning of the parties' antenuptial agreement, looking to extrinsic evidence when there was no ambiguity and finding the agreement was limited to property owned prior to the marriage.

2.The trial court erred in determining that the parties intended to exclude from the antenuptial agreement the pensions that were an issue at the time of the marriage. [11]

At appellant's urging (and, according to appellee, at his insistence) an antenuptial day agreement was executed on the day before the parties' wedding. The agreement was prepared by a Pennsylvania attorney, who was retained by appellant. The agreement was executed in Pennsylvania. Appellee did not have independent counsel or any other advice before signing the agreement. In this action, neither party challenged the validity of the agreement and Judge Leasure, in her findings, determined the agreement to be valid, albeit ambiguous. Appellant argues that. The court erred in not construing the agreement under Pennsylvania law.

As we review appellant's first two interrelated issues, we reiterate that: "Agreements affecting marriage rights, both antenuptial [12]

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[11] The first two issues are: sufficiently interrelated to be taken up together.

[12] Such agreements are variously referred to as "premarital", "prenuptial", or "antenuptial". The terms are interchangeable. Because the parties and the court below refer to this agreement as "antenuptial", we shall do likewise.

and postnuptial, are recognized in Maryland as legally binding instruments." FADER & GILBERT, MARYLAND FAMILY LAW § 14-1 (3d ed. 2000). Prior to the Court of Appeals decision in Frey v. Frey, 298 Md. 552 (1984), such agreements were held to be per se void as contrary to public policy. In abrogating that long-standing judicially created rule, the Court said: [t]he agreements are not to be rejected automatically as contrary to public policy; rather, the question is the validity of the agreements. All such antenuptial agreements, therefore, are to be evaluated upon the factors indicated in Hartz v. Hartz, 248 Md. 47, 234 A.2d 865 (1967). Frey, supra, 298 Md. at 563.

In Hartz (a case dealing with an agreement in contemplation of death which, even prior to Frey, was not void as a matter of public policy), the Court of Appeals recognized that "there is a confidential relationship between a man and a woman who [are] about to enter into an antenuptial agreement..." Hartz, supra, 248 Md. at 56 (discussing Ortel. v. Gettig, 207 Md. 594 (1955); Levy v. Sherman, 185 Md. 63 (1945)). Once the confidential relationship has been established, there is required for validity, a frank, full and truthful disclosure of the worth of the property, real and personal, as to which there is a waiver of rights in whole or in part, so that he or she who waives can know what it is he or she is waiving. Hartz, supra, 248 Md. at 56-57 (internal citations and footnotes omitted).

With those standards as our guidepost, we consider the agreement that is brought into question in this case. In so doing, we review the decision of the circuit court, sitting without a jury, under the clearly erroneous standard. Maryland Rule 8-131(c) provides: [W]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

[W]e must consider the evidence in the light most favorable to the prevailing party ... and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence." Colandrea v. Wilde Lake Cmty. Ass'n Inc., 361 Md. 371, 394 (2000) (citations omitted).

"Maryland has long recognized that parties to a domestic case may resolve their disputes by way of separation agreements that are enforceable as independent contracts." Petitto v. Petitto, 147 Md. App. 280, 298 (2002). "As a contract between the parties, such an agreement is subject to the general rules of construction applicable to other contracts." Id. at 299 (citing Bruce v. Dyer, 309 Md. 421, 433 (1987)). Since the "construction of a written contract is a question of law, subject to de novo review by an appellate court," our role is "to ascertain and effectuate the intention of the contracting parties." Petitto, supra, 147 Md. App. at 299. In ascertaining the parties' intent, Maryland follows the objective law of contract. interpretation. Under this doctrine, when a contract is clear and unambiguous, 'its construction is for the court to determine.' Moreover, the court is required to 'give effect to [the contract's] plain meaning,' without regard to what the parties to the contract thought it meant or intended it to mean. Id. at 300 (citations omitted).

Finally, we see no distinction between the construction to be given a separation and property settlement agreement, vis a vis an antenuptial agreement. We shall endeavor to determine whether the trial court properly ascertained the intent of the contracting parties.

In her consideration of the agreement, Judge Leasure commented that, although she found the agreement to be less than thorough, [13] it was valid and not procured by duress. Appellant complains that Judge Leasure admitted extrinsic

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[13] The agreement consisted of two pages of text, an attestation page, and two pages of schedules.

evidence to construe what he contends to be a fully integrated contract. It is true that the court did hear each of the parties's explanations of their purpose and intent in entering into the agreement. It is also true that appellant himself, in his direct testimony (recalling that he was appearing pro se), offered his explanation. And, when appellee's. counsel cross-examined appellant on the pre-agreement negotiations, appellant did not object. Hence, any basis for appellate review that appellant might have had to the admission of extrinsic evidence has been waived. See Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court ... ").

It is appellant's position that the antenuptial agreement extends to all marital property, including pensions. The trial court, after finding the agreement to be valid, ruled that, as to property, the agreement was limited to those items listed in Schedule A and Schedule B. The court stated: I'm also finding that this agreement is limited by its terms. At the time this agreement was entered into, the testimony was that although not vested, both parties had pension plans. [Appellant] would have the right to receive a naval pension, assuming he was with the navy for the requisite period of time. And [appellee] had a Pennsylvania teacher's pension at that time. The testimony was clear that they were both aware of the fact that the other had those pension rights. And they were not included in the agreement in either exhibit A or exhibit B, so therefore I find that it's clear that the parties intended to exclude those from the agreement.

The effect of Judge Leasure's construction of the antenuptial agreement is that it applied only to the assets listed in Schedule A and Schedule B, and not to any other property that the parties were clearly aware of, including pensions. We find no error in the trial court's interpretation of the agreement and the limitations of its terms.

Pennsylvania Law When the agreement, drafted in Pennsylvania by a Pennsylvania attorney, was signed, the

parties were domiciled in Pennsylvania. The agreement provided that it "shall be construed under and in accordance with the laws of Pennsylvania and shall in no way be affected by any change in domicile of either party." Appellant complains that the trial court erred in not construing the agreement under Pennsylvania law. [14] His assertion is without merit, for it is abundantly clear from the record that Judge Leasure did construe the agreement by the application of Pennsylvania law. At the outset of her oral opinion Judge Leasure said: It's clear that the agreement does provide that Pennsylvania law applies. Probably at this, point one of the leading cases on antenuptial agreements in Pennsylvania is the case of Simeone, S-I-M-E-O-N-E, versus Simeone, which is at 380 Pennsylvania [Super.] 37, it's a 1988 case. [15] And what this case - it held a number of different rulings or made a number of different rulings with respect to that particular case. But there's some general propositions for which that case stands that I think are relevant to what I need to determine. One is that the court in that case found that antenuptial agreements are valid if there's reasonable provision for the intended spouse or full and fair disclosure. The court also went on to discuss [how] the concept of full and fair disclosure encompasses not only disclosures of assets, but disclosure of statutory rights. In this particular case it involved one of the parties who is deceased, so there were some estate issues involved. The court held, among other things, that the agreement ... was valid, even though the wife didn't consult with independent counsel, which is one of the issues that's been

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[14] On motion, appellant was permitted to exceed the 35 page maximum of his initial brief on the basis of his need to discuss Pennsylvania law. He filed a brief of 70 pages, fewer than six of which were devoted to a discussion of Pennsylvania law.

[15] Simeone v. Simeone, 581 A.2d 162 (Pa. 1990). The trial court's citation was to the earlier decision of the intermediate trial court at 380 Pa. Super 37, 551 A.2d 219 (1988).

raised in this case. All right, applying that case law and the facts of this particular case ... (Emphasis added.)

We find Judge Leasure's interpretation of the agreement before her to be consistent with Pennsylvania law as established by that State's Supreme Court in Simeone v. Simeone, 581 A.2d 162 (Pa. 1990). There, the challenge was to the fairness and reasonableness of the agreement entered into by the parties in 1974 on the eve of their wedding day. The Pennsylvania Supreme Court observed that, [b]y invoking inquiries into reasonableness, however, the functioning and reliability of prenuptial agreements is severely undermined. Parties would not have entered such agreements, and, indeed, might not have entered their marriages, if they did not expect their agreements to be strictly enforced. If parties viewed an agreement as reasonable at the time of its inception, as evidenced by their having signed the agreement, they should be foreclosed from later trying to evade its terms by asserting that it was not in fact reasonable. ... If parties choose not to address such matters in their prenuptial agreements, they must be regarded as having contracted to bear the risk of events that alter the value of their bargains. Id. at 166.

We find nothing in Judge Leasure's oral opinion, and her construction of the agreement, that suggests she did not apply Pennsylvania law, or that is inconsistent with Pennsylvania law.

MARITAL PROPERTY/MONETARY AWARD With the exception of his challenge to the court's award of counsel fees, nearly all of appellant's remaining assertions of error relate to the martial property findings and the monetary award.

Standard of Review In our review of the monetary award, we shall apply two standards of review. First, we utilize the "clearly erroneous" standard to the court's determination of what is, and what is not, marital property because" [o]rdinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property. " *Innerbichler v. Innerbichler,* 132 Md. App. 207, 229 (2000); see also Md. Rule 8-131(c).

Factual findings that are supported by substantial evidence are not clearly erroneous. Collins v. Collins, 144 Md. App. 395, 409 (2002). Second, as to the court's decision to grant a monetary award, and the amount thereof, we apply an abuse of discretion standard of review. Gallagher v. Gallagher, 118 Md. App. 567, 576 (1997). Within that context, "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result." Innerbichler, supra, 132 Md. App. at 230.When a party seeks a monetary award, the court must follow a three step procedure: First, for each disputed item of property, the court must determine whether it is marital or non-marital. Second, the. court must determine the value of all marital property. Third, the court must determine if the division of marital property according to title will be unfair; if so, the court may make an award to rectify the inequity. Collins, supra, 144 Md. App. at 409 (citing Doser v. Doser, 106 Md. App. 329, 349-50 (1995) (internal citations omitted)); see also Md. Code Ann., Fam. Law ("F. L.") §§ 8-203, 8-204, 8-205 (Repl. Vol. 2004). Appellant's challenges on appeal require us only to examine the first and third steps of this procedure.

As to the first step, classification of the property as marital or non-marital, we observe that F.L. § 8-201{e)(1) defines "marital property" as "property, however titled, acquired by 1 or both parties during the marriage." This includes "any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement." F.L. § 8-201(e)(2). Pursuant to F. L. § 8-201(e)(3), however, marital property does not include property: (i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources.

After a court has determined the nature of property and the value thereof, it must proceed to the third step of the procedure: rectifying the inequities, if any. In addressing step three, the court shall consider F.L; § 8-205 (a) - (b), which provides in

pertinent part: (a) Grant of Award. - (1) Subject to the provisions of, subsection (b) of this section, after the court determines which property is marital property, and the value of the marital property, the court may ... grant a monetary award ... as an adjustment of the equities and rights of .the parties concerning marital property, whether or not alimony is awarded. (b) Factors in determining amount and method of payment or terms of transfer. - The court shall determine the amount and the method of payment of a monetary award .... after considering each of the following factors: 1) the contributions, monetary and nonmonetary, of each party to the well-being of the family; (2) the value of all property interests of each party; (3) the economic circumstances of each party at the time the award is to be made; (4) the circumstances that contributed to the estrangement of the parties; (5) the duration of the marriage; (6) the age of each party; (7) the physical and mental condition of each party; (8) how and when specific marital property or interest in [the pension, retirement, profit sharing., or deferred compensation plan], was acquired,. including the effort expended by each party in accumulating the marital property or the interest in [the pension, retirement, profit sharing, or deferred compensation plan], or both; (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety; (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in [the pension, retirement, profit sharing, or deferred compensation plan], or both. (Alterations added). The court shall articulate that it has considered all the factors when granting (or denying) a monetary award request. See Imagnu v. Wodajo, 85 Md. App. 208, 222 (1990). The monetary award to appellee was an effort

to achieve an "adjustment of the equities," relating to the parties' respective assets. We address each item in turn.

3. The trial court erred in awarding Appellee 50% of Appellant's Navy retired [sic] pay in direct conflict with the antenuptial agreement and erred in defining the formula for calculating the martial [sic] portion of Appellant's Navy retired [sic] pay.Having rejected appellant's argument that the parties' pension rights are controlled by the antenuptial agreement, we shall address the second aspect of appellant's assignment of error - that the court's calculation of the marital portion of his military pension was erroneous.

The trial court awarded appellee 50% of the marital portion of appellant's military pension, to be paid "if, as, and when" appellant becomes entitled to receive his pension benefits under the so called Bangs formula. See Bangs v. Bangs, 59 Md. App. 350 (1984). Pension rights, acquired during the marriage, constitute marital property. See Cotter v. Cotter, 58 Md. App. 529, 537 (1984). Military pensions are to. be considered "in the same manner as any other pension or retirement benefit." F.L. § 8-203(b). As with other marital property interests, the court made a determination as to the pension's status as marital property and included it in the monetary award, as an aspect of the adjustment of the parties' rights.Appellant next quarrels with the court's percentage apportionment of his U.S. Navy pension. That argument misses the mark, for the, court made no percentage apportionment. The court merely awarded" appellee 50% of the marital portion of the pension benefits. That portion will be determined at the time appellant's years and months of service end, and when benefits are paid. We find no error in the court's award to appellee of a portion of appellant's U.S. Navy pension [16]

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[16] We observe that appellant does not complain of being awarded 50% of his marital interest in appellee's Maryland State Teacher's Retirement pension.

4. The trial court erred in awarding Appellee 50% of Appellant's retirement accounts governed by the Employee Retirement Income Security Act (APL Plan A, APL Plan B, TIAA, and CREF) in direct conflict with the antenuptial agreement and the legal precedence of Pennsylvania.

Appellant's entire argument is couched in terms of the court's having erred by determining the above-enumerated accounts to be marital property, in contravention of the terms of the antenuptial agreement. Having disposed of that issue in Parts 1 and 2, above, we find no merit to appellant's contention.

5. The trial court erred in awarding Appellee 50% of Appellant's USAA IRA and 50% of Appellant's Navy Thrift Savings Plan in direct conflict with the antenuptial agreement.

The benefits herein referred to were earned during the marriage; they are marital property; and are not excluded by the antenuptial agreement.

6. The trial court erred in ordering the parties to elect, whenever available, for the other party to receive "full survivors benefits" in each of the accounts listed in the Judgment of Absolute Divorce in direct conflict with paragraph 2 of the antenuptial agreement.

We again reiterate that the antenuptial agreement did not preclude the court's treatment of survivors benefits. The effect of the court's order is to assure payment of the benefit to a survivor who, in effect, becomes a de facto beneficiary of the equivalent of a policy of life insurance. See Matthews v. Matthews, 336 Md. 241, 253 (1994).

7. The trial court erred in determining the house at 9402 Book Row was "marital property," ordering it sold and the proceeds divided; and in failing to specify the distribution of net proceeds in proportion to each parties' [sic] contribution.

Appellant makes several arguments with respect to the marital home. The property at 9402 Book Row was purchased, and titled as tenants by the entireties, in 1985 - four years into the marriage. The down payment consisted of jointly saved funds

and an additional $8,000 contributed by appellee, from an advance on her inheritance from her father. Thereafter, until the parties separated, all expenses of the household were met by marital funds. For the reasons earlier stated, we reject appellant's first argument that the home was excluded from a marital property determination pursuant to the antenuptial agreement. Appellant posits that the trial court erred in failing "to specify in what proportion the proceeds [of the sale] should be divided." Appellant is wrong; the court specifically ordered an equal distribution of the net proceeds of the sale.

8. The trial court erred in refusing to award Appellant "Crawford payments" for expenses incurred; (1) during the time Appellee resided in the house but refused to contribute to household expenses (May 2002 to June 2003); (2) for the period of time after Appellee vacated the residence but before the divorce was final (July 2003 to December 2004); and (3) for the period January 2005 to present.

Appellant next argues that, during the marriage, he contributed a greater amount to the property than did his wife. In effect, he seeks credits from the sale of the real estate under the rule of Crawford v. Crawford, 293 Md. 307 (1982). Crawford credits may be permitted to one tenant by the entireties for post-separation mortgage payments or other carrying charges on property held in a tenancy by the entireties. Id. at 309-11. Such entitlement is a matter of equity, not a matter of right. Broseus v. Broseus, 82 Md. App. 183, 192 (1990). Appellant's argument relates to three time periods: the first encompassing the time during which the parties both continued to live in the home, but during which appellee did not contribute to the expenses of the home; the second encompassing the time after which appellee left the home, but before the entry of the judgment of divorce and, the third, the time subsequent to the divorce. As to the first period of time, the evidence reveals that, during the marriage, the parties, both employed, contributed to the property

expenses, albeit in different amounts. Nonetheless, as Crawford advises, "[T]he presumption of gift doctrine is alive in Maryland, if at the time of the transactions(s) in question, the parties are living together as husband and wife." Crawford, supra, 293 Md. at 314. There being insufficient evidence to rebut the presumption of gift, the court did not err in disallowing credits for that period of time. As to the latter periods, appellant employs a heightened application of the doctrine of chutzpah in suggesting that appellee was, in any way, responsible for a contribution to the expenses of the home when appellant lived there exclusively. We recall that the court granted the divorce to appellee on the grounds of appellant's constructive desertion, and that after appellee left the home, appellant had the locks changed. The trial court, appropriately, found his conduct to amount to an ouster. By no stretch of imagination could we disagree with that finding.

9. The trial court erred in determining the residence at 10685 High Beam Court, acquired by the Appellee prior to separation, to be the non-marital property of the Appellee, and finding Appellant is not entitled to any portion of the equity.

Anticipating the separation, appellee contracted to purchase a residence at 10685 High Beam Court. She provided a down payment of $40,000, consisting of $10,000 withdrawn from a joint account (with appellant) and $30,000 provided as a loan from her parents. Settlement was just a few days before the separation in July, 2003. To address appellant's contention that the property was marital property, we need only refer to the observation of the Court of Appeals in Alston v. Alston, 331 Md. 496, 507 (1989): Where one party, wholly through his or her own efforts, and without any direct or indirect contribution by the other, acquires a specific item of marital property after the parties have separated and after the marital family has, as a practical matter, ceased to exist, a monetary award representing an equal division of that particular property would not

ordinarily be consonant with the history and purpose of the statute.

10. The trial court, in direct conflict with the wording of the antenuptial agreement, erred in finding that the contents of 9402 Book Row were "marital" property, while finding the contents of 10685 High Beam Court were not "marital" property.

For the reasons that we have set out in our discussion of appellant's issues, in Parts 7 and 9 above, we find his argument to be without merit. The antenuptial agreement has no bearing on the status of the personal property in the marital home and, for the same reason that the real property was marital property, the contents of the residence were likewise marital property.

11. The trial court erred in finding that Appellant's share of a hunting cabin is "marital property" and should be sold, even though it was purchased with non-marital funds (gift to Appellant).

The record does not reveal that appellant is a titled owner of the hunting cabin in question. Apparently owned by his aunt and uncle, it was used by appellant who, at some time, decided to contribute $10,000 to purchase a "share" in the cabin or camp. Appellant claims that the $10,000 came to him as a gift from his father; appellee testified that it was received by check, payable to them, jointly, as a Christmas gift, and that she recalls endorsing the check. On the evidence presented; we cannot find that the court was clearly erroneous in concluding that the interest in the hunting cabin was acquired with marital funds and, thus, was marital property. However, there is no evidence that appellant was a title owner of the property; hence, the court's direction that the cabin be sold is without support in the record. Our decision, however, does not disturb the court's finding that appellee enjoyed a $5,000 marital interest in the hunting cabin. Therefore, the monetary award shall stand.

12. The trial court erred in finding the Appellant's: (1) VVS1J Diamond Solitaire ring, (2) pearl necklace, and (3) pearl earrings are now the non-marital property or the Appellee.

Judge Leasure found that all three items of jewelry were appellee's non-marital property, having been either pre-marital property or acquired by gift. Appellant claims that all three items were his pre-marital property and, therefore, the court erred in determining them to be appellee's sole, non-marital property. He argues that, as to the diamond that became appellee's engagement ring, appellee's use of the ring was merely a loan. He likewise argues that he permitted appellee to wear the pearls, but did not intend for her to have them as a gift. The trial court heard the parties' conflicting explanations of their understanding of the use and ownership of the jewelry. As judges must, the court then made a factual determination based upon the evidence presented, and a credibility assessment. We cannot find that the court's finding of fact was clearly erroneous on the record before us. [17]

13. The trial court erred in relying upon the Appellee's erroneous Joint Statement of Marital and Non-marital Property (9-207) to distribute the parties' property.

Appellant argues that appellee's joint statement, required by Md. Rule 9-207, was "erroneous," was filed late, and that the court's reliance on it was in error. Appellee responds that, while appellant filed a joint statement, his filing contained no values. Therefore, she posits, the court's reliance on her joint statement was justified. Upon our review of the record, we find the court's reliance to be justified, and find no error.

14. The trial court erred in signing the final "Judgment of Absolute Divorce" (prepared by Appellee's attorney) which was different than the trial court's verbal ruling (with regard to certain significant orders) and contained additional determinations and awards favorable to Appellee NOT granted by the trial court.

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[17] Although appellant again claims benefit from the antenuptial agreement, it is noteworthy that none of the three items of jewelry were listed on the schedules to the agreement.

A judgment of divorce determines the finality of the litigation and defines the rights and obligations of the parties. In contrast, a trial court's oral opinion is an explanation of the court's reasoning, factual findings, and legal conclusions. See, e.g., Kearns v. Kearns, 78 Md. App. 461, 465 (1989) (oral opinion is not a final judgment where a written opinion is directed to be written). Perforce, the written judgment does not contain as much detail as does the court's oral opinion, nor should it. It is neither unreasonable nor unusual for a trial court to request counsel for one, or both, parties: to prepare a written final judgment for the court's signature. In his brief, appellant cites several instances of what he perceives as distinctions or omissions in comparing Judge Leasure's oral opinion with the final, written judgment of divorce. In our review of the record, we find no aspect of the court's judgment of absolute divorce that varies significantly from the oral opinion or, more importantly, that is not supported by ample evidence.

15. The trial court erred in using the Appellee's grossly inaccurate Financial Statements and 9-207: as a basis for finding the value of Appellant's property clearly exceeded the value of Appellee's property.

In this argument, appellant revisits his recurring theme that the court's monetary award was disproportionate to the actual values of the parties' assets. We remind appellant that the court's charge in determining a monetary award is to be fair and to equalize the equities of the parties. See Frankel v. Frankel, 165, Md. App. 553, 573 (2005) ("The primary. objective of a monetary award is equity."). We conclude that the court has done so. Appellant also, again, assails the court's reliance on appellee's Md. Rule 9-207 submission. We need not repeat our conclusion on that issue, as set out in Part 13, above. We find no error.

16. The trial court erred in failing to grant the divorce on the grounds that Appellee deserted Appellant.

In his brief, appellant re-hashes much of the evidence dealing with the marital discord. Distilling that evidence, there was before the court evidence of appellant's abusive treatment of appellee, evidence that he often suggested that she leave the marriage, including instruction to his son "to leave and take his fucking mother with him." Again, we point out that the court heard evidence, made credibility assessments, and reached a factual conclusion. We find no error in the court's findings. More to the point, appellant consented to appellee's move from the marital residence. "A party who consents to a. separation has not been abandoned." Freedenberg v. Freedenberg, 123 Md. App. 729, 745 (1998).

17. The trial court erred in ordering Appellant to pay Appellee's attorney's fees in the amount of $7,500 in direct conflict with paragraph 5 of the antenuptial agreement and the evidence presented at trial.

The antenuptial agreement provides, in paragraph 5: Each party does hereby waive all claims which he/she now or may hereafter have against the other for payment of alimony, alimony pendente lite, counsel fees or expenses, after 1 year from the commencement of divorce proceedings or until the party seeking alimony obtains employment, whichever is earlier. Appellant posits that the agreement precludes the court's authority to award counsel fees. The trial court ruled that paragraph 5 "has to do with litigating issues contained within the agreement, specifically as it relates to alimony." The award of counsel fees was expressly made "for issues outside the antenuptial agreement which had to be litigated." We think that the trial court's construction of paragraph 5 of the agreement is sound, and we will not disturb that ruling. [18] Nor do we find the court's award of counsel fees to appellee to be an abuse of

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[18] Early in the litigation, appellant was represented by counsel. He, too, made a request for counsel fees, which the court denied. We might well consider his request for fees as a waiver of paragraph 5.

discretion, either in terms of the award itself, or the amount. F.L. § 7-107 permits a trial court to award counsel fees, costs, and suit money as reasonable and necessary expenses of the litigation. In so doing, the court must consider "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding" F.L. § 7-107(c). Before the court was ample evidence of the parties' respective financial resources and needs, from which the court was able to determine that, as a result of the disparity between the resources of appellant and appellee, an award of counsel fees was appropriate. The record also bears out appellee's assertion that the litigation was unnecessarily prolonged by appellant's intransigence, both at trial and pre-trial. And, it is beyond cavil that appellee's prosecution of the litigation was substantially justified. We find no abuse of discretion in the court's award of counsel fees that would justify our vacating, the award. "The [court] may make a fee award based upon the record, [its] observations at trial as well as [its] own experience." Rosenberg v. Rosenberg, 64 Md. App. 487, 539 (1985). Judge Leasure, an experienced trial judge, presided at the protracted trial of this case. She was in a far better position than we are to assess the competency of counsel, the quality of legal services rendered, and the reasonableness of the fees charged. Trial judges enjoy the benefit of a rebuttable presumption that they performed their duties properly when awarding counsel fees. See Stern v. Stern, 58 Md. App. 280, 301 (1984). Appellant has not rebutted the presumption.

18. The trial court erred in not permitting Appellant to call Appellee's attorney to testify even though Appellee's attorney had submitted an affidavit; regarding attorney fees.

To support the request for counsel fees, appellee's counsel submitted to the court an affidavit attesting to her representation of appellee. The affidavit was accompanied by a billing worksheet. At that point, appellant sought to call appellee's

counsel as a witness. Appellee's counsel raised, at least inferentially, the issue of attorney-client privilege and confidentiality. The court ultimately ruled that counsel would not be called to testify, and extended latitude to appellant to argue all issues relating to counsel fees. We agree that appellant's proffer of the testimony that he expected counsel to give would have intruded into the confidentiality of the attorney-client relationship. We have also often aid that control of the trial proceedings rests exclusively within the discretion of the presiding judge. See Cooley v. State, 385 Md. 165, 174 (2005). On the record before us, we find no abuse of discretion. Everything that appellant proffered, which would not have violated the attorney-client privilege or confidentiality, was before the court. And, as we have noted, the court permitted appellant expansive argument on all of his issues.

19. The trial court erred in failing to allow Appellant to be qualified as an expert in statistical analysis for the purpose of showing the effect of compound inflation on the parties' contribution to assets acquired during the marriage.

When appellant sought to testify as an expert witness in the field of statistical analysis, counsel for appellee objected on the ground that appellant had failed to provide, in discovery, the identity of proposed experts. See Md. Rule 2-402(f). On that basis alone, the trial court properly ruled that appellant could not provide expert opinion. Moreover, the record is resoundingly silent with regard to any effort by appellant to comply with Md. Rule 5-702, which provides: Expert testimony may, be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue., In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert

testimony. No factual basis existed to support appellant's suggestion that he was an expert in the field of statistical analysis. That failure, taken together with his failure to identify experts, pre-trial, supports the court's ruling

20. The trial court erred in failing to address all outstanding issues in the trial court's ruling or in the Judgment for Absolute Divorce.

We take appellant's sub-arguments in order.

1. The trial court failed to rule on his complaint for divorce on the grounds of desertion. Having found that appellee met her burden of proving constructive desertion, the court impliedly rejected any claim that she was guilty of deserting appellant. Logic could not direct any other result.

2. The trial court did not rule on appellant's discovery complaints and motions. The record abundantly reflects otherwise.

3. The trial court failed to rule on appellee's bank accounts. Again, the record discloses that the court, in fashioning the monetary award, did just that.

4. The trial court did not make disposition of automobiles. The parties owned two vehicles, both jointly titled. The court was without authority to transfer title, but could have ordered the vehicles sold and the proceeds divided equally. This Court will remand for the entry of an appropriate order for the disposition of motor vehicles. Of course, we note in passing that the obvious solution to the automobile issue is for each party to endorse the title of the other. It would be desirable if, for the few moments required for such action, they could agree to do so.

21. The trial court erred in failing to order Appellee to produce discovery.

Contrary to appellant's assertion, the court spent considerable time and effort, at the outset of the trial, considering and resolving discovery issues. The management of discovery is left to the sound discretion of the trial court and, absent an abuse of

that discretion, will not be disturbed on appeal. See Baltimore Transit Co. v. Mezzanotti, 227 Md. 8, 13-14 (1961). We find no abuse of discretion.

22. The court erred in limiting the testimony of Appellant regarding the contribution of each of the parties to the assets acquired during marriage.

Appellant's final contention clearly flows from his inability or unwillingness to appreciate the effect of the Marital Property Act, F.L. § 8-201 et. seq., and the court's obligation to consider the evidence in light of the provisions of the statute. In our review of the substantial record before us, we are struck by the diligence and thoroughness of the trial court's consideration of the many issues presented by appellant during the three-day trial. Also apparent from the record is the trial court's patience with appellant and his myriad theories and evidentiary concepts. In the final analysis, we believe that Judge Leasure afforded appellant considerable leeway in the defense of appellee's case and the presentation of his own. We find neither error nor abuse of discretion.

CONCLUSION We shall affirm the rulings and judgment of the circuit court in all respects, save two:

1. The court shall amend its judgment of absolute divorce by eliminating the provision directing sale of the hunting cabin; at the same, time we shall not disturb the court's award to appellee of a marital interest in the marital funds devoted to the cabin; and

2. The court shall enter an order directing the sale of the vehicles jointly owned by the parties, and an equal division of the proceeds.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED, EXCEPT AS TO TWO ISSUES ENUMERATED IN THE CONCLUSION SECTION OF THIS OPINION; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS

OPINION. COSTS ASSESSED 95% TO APPELLANT AND 5% TO APPELLEE.

1b
Appendix B

IN THE CIRCUIT COURT FOR HOWARD COUNTY Case No.: 13-C-03-055885
Entered DEC 23 2004 CLERK, CIRCUIT COURT HOWARD COUNTY
SHARON SHIELDS Plaintiff v. WOODROW SHIELDS Defendant

JUDGMENT OF ABSOLUTE DIVORCE

This matter having come before the Court on the Plaintiff's Second Amended Complaint for Absolute Divorce, and the Court having considered the entire proceedings herein and having heard testimony, both parties being present, the Plaintiff being represented by counsel and the Defendant appearing Pro Se, it is this 20th day of December, 2004 by the Circuit Court for Howard County, Maryland,

ADJUDGED, ORDERED and DECREED, that the Plaintiff. SHARON SHIELDS, is hereby granted an absolute divorce from the Defendant, WOODROW SHIELDS; and it is further,

ORDERED, that the marital home at 9402 Book Row, Columbia, Maryland, 21046-2010, and the contents of such are marital property. As such, the home shall be immediately listed and sold and the net proceeds be divided equally between the parties; and it is further

ORDERED, that Fred Luedde Coover, III, Esquire, be, and hereby is, appointed as Trustee to facilitate such sale, and payment for services be deducted from the proceeds of the sale of the home; and it is further

ORDERED, that the share of the hunting cabin owned by the Defendant is marital property, and shall be sold and the parties shall equally divide the net proceeds; and it is further

ORDERED, that the Plaintiff's jewelry s in part, premarital and

in part a gift, and as such, is not marital property; and it is further

ORDERED, that the Plaintiff's residence at 10685 High Beam Court, Columbia, Maryland, and the contents thereof, were purchased after the separation, and as such, are not marital property; and it is further

ORDERED, that the Defendant is awarded Fifty percent (50%) of the Plaintiff's Fidelity Account, total value at time of trial of One Hundred Twenty Five Thousand Four Hundred Thirteen Dollars and Eighty Cents (125,413.80), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Defendant is awarded Fifty percent (50%) of the Plaintiff's USAA Account, total value at time of trial of Thirty-two Thousand Nine Hundred Thirty-five Dollars ($32,935.00), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Defendant is awarded Fifty percent (50%) of the Plaintiff's Maryland State Teacher's Retirement on an "if, as and when" basis and pursuant to a Qualified Domestic Relations Order; and the Plaintiff shall retain the Defendant as the beneficiary of the survivor benefits under the Plan; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) of the Defendant's APL Plan A, total value at time of trial of Two Hundred Nine Thousand, Five Hundred Eleven Dollars and Eighty-six Cents ($209,511.86), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) of the Defendant's APL Plan B, total value at time of trial of One Hundred Three Thousand, Eight Hundred Seventy-seven Dollars and Fifty-two Cents ($103,877.52), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) of the Defendant's USAA IRA. total value at time of trial of

Twenty Five Thousand, One Hundred Sixty-one Dollars and Fifty-five Cents ($25,161.55), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) of the Defendant's TIAA Account, total value at time of trial of Thirty

Thousand, Seven Hundred Ninety-eight Dollars ($30,798.00), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) of the Defendant's CREF Account, total value at time of trial of Forty-two Thousand, Four Hundred Eighty-four Dollars and Seventy-seven Cents ($42,484.77). pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) of the Defendant's Navy Thrift Savings Plan. total value at time of trial of Sixteen Thousand Seven Hundred Fifty Dollars ($16.750.00), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%) or Fifty-three Thousand Seven Hundred Sixty-five Dollars ($53,765.00) of the Defendant's APL Credit Union Account, total value at time of trial of One Hundred Seven Thousand, Five Hundred Thirty Dollars ($107,530.00),; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent (50%.) of the Defendant's USAA SSA Account, total value at time of trial of Four Thousand Eight Hundred Fifty-eight Dollars and Eighty-two Cents ($4,858.82), pursuant to a Qualified Domestic Relations Order; and it is further

ORDERED, that the Plaintiff is awarded Fifty percent of the marital property portion of the Defendant's Naval pension earned during his years of service on active duty and in the Naval Reserves "if, as and when" such payments are made to the Defendant. Such portion shall be determined by the

following fraction: (a) the numerator is the number of years during the parties' marriage in which the Defendant was accumulating retirement benefits up to and including the month in which this Judgment of Absolute Divorce is entered, and (b) the denominator is the total number of years of the Defendant's creditable service. The Defendant shall immediately elect that the Plaintiff be entitled to the full Survivor Benefit Plan. And it is further

ORDERED, that the parties shall, wherever available in the above transfers, elect the other to receive full survivors benefits in each account; and it is further

ORDERED, that this Court expressly retains jurisdiction over the matters concerning the Qualified Domestic Relations Orders, and that all provisions of this Judgment pertaining to these Orders be, and the same are hereby declared to be subject to the further Order of this Court in the premises; and it is further

ORDERED, that the Defendant shall pay to the Plaintiff attorney's fees in the amount of Seven Thousand Five Hundred Dollars ($7,500.00).

The Honorable Diane O. Leasure
Judge, Circuit Court for Howard County. Maryland